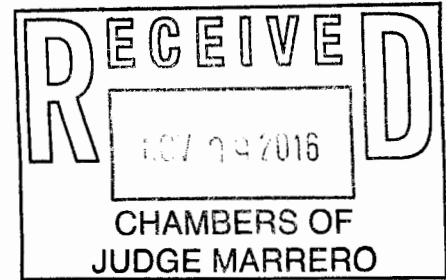


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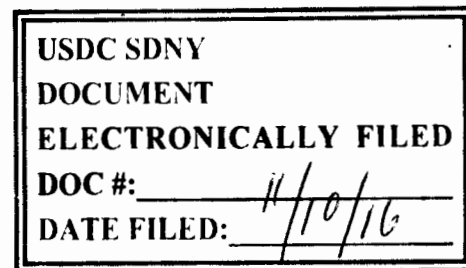


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November 8, 2016

BY FAX

Hon. Victor Marrero
United States District Judge
Southern District of New York
United States Courthouse
500 Pearl Street, Suite 1040
New York, NY 10007



Re: C.D.S. Inc. v. Zetler et al., No. 16 Civ. 3199 (VM) (JLC)

Dear Judge Marrero:

I represent defendants/counterclaim plaintiffs Rapid Systems CC, CDS LLC and Bradley Zetler (collectively "Rapid Systems") in this case. I write to request clarification regarding a provision in the Court's Decision and Order entered November 4, 2016.

The Decision and Order states:

The preliminary injunction does not prevent Rapid Systems from developing independent products to compete with the new product being developed by CDS SARL, but, because ownership of Agencypad is disputed, Rapid Systems may not use Agencypad to do so.

(ECF Doc. 138, at 7-8.) The statement appears to extend the terms of the Court's preliminary injunction entered June 6, 2016, into new territory.

The existing injunction as implemented by the Proposed Recommendation of Special Master Daniel Garrie (ECF Doc. 59) provides a complicated scheme under which C.D.S. Inc. and Rapid Systems coordinate their work on the Agencypad software that is operating on a particular server. That server¹ on which Agencypad is operating is accessed by all users of

¹ It is in fact more than one server, but for simplicity this letter refers to it as "the server."

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Agencypad around the globe. In some regions, the software is marketed by the “CDS Companies” – either by C.D.S. Inc. (owned 55%-45% by Jerome Marechaux and Bradley Zetler), or by CDS SARL (owned 92%-5%-3% by Jerome Marechaux, Christelle Riot and Jerome Viollon) – and in South Africa, New Zealand and Australia it has always been marketed and sold by Rapid Systems CC (owned 100% by Bradley Zetler). But whatever region an Agencypad user is in, the user is accessing the same server that users in every other region are accessing. Thus, Rapid Systems, unfortunately, finds itself providing its South African customers with a product labeled “CDS,” though ownership of the product is disputed.

The preliminary injunction entered June 6, 2016, does not, however, state that Rapid Systems cannot prepare for the day when ownership of Agencypad is decided. I have been informed that the Commercial Court of Paris may render a decision as early as November 23, 2016. After recently learning that the CDS Companies are secretly developing a rival product,² Rapid Systems began preparing to re-launch Agencypad with Rapid Systems’ branding as soon as a decision is rendered, in the event that the decision favors Rapid Systems.³ The re-branded software would also incorporate improvements that Rapid Systems believes are important to maintain Agencypad’s competitiveness. This work does not affect Agencypad’s operation on the server to which the Court’s injunction of June 6, 2016, gave C.D.S. Inc. access. No part of the Court’s preliminary injunction, as implemented by the Special Master’s Proposed Recommendation, prohibits Rapid Systems from making such preparations.

Rapid Systems therefore requests clarification that the Court’s Decision and Order of November 4, 2016, was not intended to extend the existing preliminary injunction and does not prevent Rapid Systems from preparing to launch Agencypad with Rapid Systems’ branding and with any other improvements, in the event of a decision confirming that Agencypad – just like Portfoliopad, Castingpad, and other Rapid Systems products operating on the same server as Agencypad (all of which are, like Agencypad, sold by C.D.S. Inc. and CDS SARL in their respective territories) – belongs to Rapid Systems.

Request DENIED. The Court is not persuaded that there is any ambiguity in its Order dated 11-4-16 that requires clarification, or that the Order goes beyond the SO ORDERED. existing injunction.
 11-10-16
 DATE: _____

Sincerely,

Ihsan Dogramaci

Ihsan Dogramaci

The counterclaim defendant's letter to your Honor of October 21, 2016, further revealed that C.D.S. Inc.'s other shareholder, Jerome Marechaux has been secretly developing the rival product for the past sixteen months, to transfer business away from C.D.S. Inc.

³ Indeed, the CDS Companies have threatened a trademark infringement claim if Rapid Systems uses the brand “CDS.”

The Law Office of Ihsan Dogramaci

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November 8, 2016
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cc (by e-mail):

Hon. James L. Cott
Special Master Daniel Garrie
All counsel of record